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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 DONALD CRAWFORD,

10 Plaintiff,

11 vs.

CIV S-04-2452 WBS KJM PS

12 WE HALL, et al.,

13 Defendants.

ORDER

14 \_\_\_\_\_/  
15 Plaintiff is proceeding in this action pro se and in forma pauperis. By order filed  
16 December 27, 2004, plaintiff's complaint was dismissed with leave to amend. Although plaintiff  
17 has filed numerous pleadings since that time, none of those documents complies with the  
18 December 27, 2004 order.

19 The federal in forma pauperis statute authorizes federal courts to dismiss a case if  
20 the action is legally "frivolous or malicious," fails to state a claim upon which relief may be  
21 granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
22 § 1915(e)(2).

23 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
24 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
25 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
26 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
490 U.S. at 327.

1 A complaint, or portion thereof, should only be dismissed for failure to state a  
2 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set  
3 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &  
4 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer  
5 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a  
6 complaint under this standard, the court must accept as true the allegations of the complaint in  
7 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the  
8 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,  
9 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

10 The court will construe the pleadings filed since the court's December 27, 2004 as  
11 an amended complaint. Construed as such, the court finds the allegations in plaintiff's amended  
12 complaint so vague and conclusory that it is unable to determine whether the current action is  
13 frivolous or fails to state a claim for relief. The court has determined that the complaint does not  
14 contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal  
15 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of  
16 the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th  
17 Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which  
18 defendants engaged in that support plaintiff's claim. Id. Because plaintiff has failed to comply  
19 with the requirements of Fed. R. Civ. P. 8(a)(2), the amended complaint must be dismissed. The  
20 court will, however, grant leave to file a second amended complaint.

21 As a model for drafting such a document, plaintiff is directed to McHenry v.  
22 Renne, 84 F.3d 1172, 1177 (9th Cir. 1996). There, the Ninth Circuit Court of Appeal upheld the  
23 dismissal of a complaint it found to be "argumentative, prolix, replete with redundancy, and  
24 largely irrelevant. It consists largely of immaterial background information." It observed that the  
25 Federal Rules require that a complaint consist of "simple, concise, and direct" averments. Id. As  
26 a model of concise pleading, the court quoted the standard form negligence complaint from the

Appendix to the Federal Rules of Civil Procedure:

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway, called Boylston Street, in Boston Massachusetts, defendant negligently drove a motor vehicle against plaintiff, who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken, and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of one thousand dollars.

Id.

Phrased another way, "Vigorous writing is concise." William Strunk, Jr. & E.B. White, *The Elements of Style*, § III, ¶ 13 <<http://www.bartleby.com/141>>. Accordingly, any amended complaint should **not exceed twenty pages**.

If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional grounds upon which the court's jurisdiction depends. Federal Rule of Civil Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

In addition, plaintiff once again is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's filings, docketed as numbers 8-10, 12-18 and 20, and construed as an  
3 amended complaint, are dismissed; and

4 2. Plaintiff is granted thirty days from the date of service of this order to file a  
5 second amended complaint that complies with the requirements of the Federal Rules of Civil  
6 Procedure, and the Local Rules of Practice; the second amended complaint must bear the docket  
7 number assigned this case and must be labeled "Second Amended Complaint"; plaintiff must file  
8 an original and two copies of the second amended complaint; failure to file a second amended  
9 complaint in accordance with this order will result in a recommendation that this action be  
10 dismissed.

11 DATED: May 3, 2005.

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14 UNITED STATES MAGISTRATE JUDGE  
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